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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

NO. **13** ORIGINAL

STATE OF TEXAS

Plaintiff

V.

STATE OF NEW JERSEY, ET AL,

Defendants

BRIEF ON MOTION FOR LEAVE TO FILE
BILL OF COMPLAINT

WILL WILSON

Attorney General of Texas

HENRY G. BRASWELL

Assistant Attorney General

Capitol Station

Austin 11, Texas

ATTORNEYS FOR PLAINTIFF,

The State of Texas

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STATEMENT OF THE CASE

Plaintiff, the State of Texas, seeks to invoke the original jurisdiction of the Supreme Court of the United States under the authority of Section 2, Article III of the Constitution of the United States, and Section 1251, Title 28 of the United States Code because three states—Texas, New Jersey and Pennsylvania are each aggressively asserting the exclusive right and power to escheat the same property, to-wit: approximately Thirty-Seven Thousand, Eight Hundred Fifty-Three Dollars and Fifty-Three Cents (\$37,853.53) composed of various sums of money owed by Sun Oil Company (a New Jersey corporation, transacting business in Pennsylvania and Texas under valid certificates of authority) to more than eighteen hundred (1800) different people whose identity and/or whereabouts have been unknown for a sufficient length of time to qualify the debts for escheat under the respective statutes of each of the three states.

The subject debts owed by Sun Oil Company are for wages, services, supplies, rental and royalty payments, mineral proceeds, cash dividends, deductions from wages for employee war bonds and stock scrip certificates. Texas contends that these debts have their situs in Texas for purposes of escheat inasmuch as all of the debts fall into the category of either having arisen in Texas or being owed to persons whose last known residence and domicile is in Texas, or both.

New Jersey filed a suit in its state courts on August 3, 1961, to force Sun Oil Company to relinquish custody of this property to the State Treasurer of New Jersey, where such property will, after two years, escheat to New Jersey in a summary action. Sun Oil Company is defending against such suit on the ground that the New Jersey courts lack the power to require Sun Oil Company to relinquish the property to New Jersey since other states are claiming this same property and a judgment in the New Jersey courts will not protect Sun Oil Company from the claims of other states to this property. Sun Oil Company's right to due process under the Federal Constitution will be violated, the company contends. The New Jersey trial court overruled this defense on March 26, 1962, at a pre-trial hearing in said cause and set the case for trial on the merits for July 15, 1962.

Pennsylvania notified Sun Oil Company on or about April 1, 1962, that it is claiming this same property under its escheat statutes and has called for an audit of the property.

Texas received from Sun Oil Company on January 2, 1962, a written report of this property certified by the Treasurer of Sun Oil Company as being property subject to escheat under the laws of Texas. Said report was filed pursuant to the requirements of the Texas escheat statute, which statute authorizes the Attorney General to institute a suit to escheat such property in the Texas courts at the

expiration of 120 days from the date the report was received. The Treasurer of Texas has taken the necessary administrative steps upon which to predicate a suit by Texas to escheat the property and such suit is eligible to be brought under the Texas escheat statute during the month of May, 1962, but Texas will withhold any such suit pending disposition of the case at bar by the Supreme Court of the United States.

Texas has notified Sun Oil Company that it is claiming the exclusive right to escheat this property under the Texas escheat statutes. Sun Oil Company has notified the Attorney General of Pennsylvania and the Attorney General of New Jersey, as well as the court of New Jersey where the aforesaid cause is pending, that Texas claims such right. New Jersey and Pennsylvania, nevertheless, each persist in asserting the exclusive right to escheat such property.

The object of the Complaint is to afford all interested parties their full day in court before any state proceeds further toward an escheat of the property and, more particularly, to obtain a final authoritative adjudication of the rights and powers of the respective states with reference to the escheat of this property, it being contended by Plaintiff that the situs of such property is solely in Texas for purposes of escheat, and it being further contended by Plaintiff that all of the facts and circumstances surrounding the property which will prove its situs should be discovered and adduced in a proceeding to which all interested states and persons can be made parties. Plaintiff further prays for injunctive relief to maintain the status quo while this cause is being determined by the Supreme Court of the United States and for permanent injunctions against interference with Texas' claim to this property upon final hearing on the merits.

There being no other competent forum available to the parties, and there being a clear threat of imminent and irreparable damage and loss to the property and constitu-

tional rights of Plaintiff, the State of Texas, and the Defendant, Sun Oil Company, due to the aggressive assertion of mutually exclusive claims by Pennsylvania and New Jersey to the right to escheat such property, it is imperative that this Court exercise its original and exclusive jurisdiction over such cases and controversies by granting leave to file the instant Complaint and proceeding to determine the rights of these states with respect to the escheat of this property, as well as granting the further relief prayed for in the Complaint.

SPECIFICATION OF POINTS

- I. THE COMPLAINT REFLECTS A JUSTICIABLE CASE AND CONTROVERSY OVER WHICH THIS COURT HAS ORIGINAL AND EXCLUSIVE JURISDICTION.**
- II. ALL INDISPENSABLE AND NECESSARY PARTIES ARE BEFORE THE COURT.**
- III. THE STATES ARE THE REAL PARTIES AT INTEREST.**
- IV. THE COMPLAINT PRESENTS A QUESTION OF LAW TO BE DETERMINED SOLELY BY THIS COURT.**
- V. THE INJUNCTIVE RELIEF PRAYED FOR BY PLAINTIFF IS NECESSARY.**
- VI. IT IS IMPERATIVE THAT THE SUPREME COURT ASSERT ITS JURISDICTION.**

ARGUMENT

The jurisdiction of the Supreme Court of the United

States is set forth in the first two clauses of Section 2, Article III, of the Federal Constitution, which provide as follows:

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, under their Authority; . . . to Controversies to which the United States shall be a party;—to controversies between two or more States;—between a State and Citizens of another State; . . .

"In all Cases affecting Ambassadors, other Public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make."
(Emphasis supplied)

These Constitutional provisions have been supplemented by the Congress in 28 U.S.C.A., Section 1251, which in part, provides:

"Section 1251. Original Jurisdiction

(a) The Supreme Court shall have original and exclusive jurisdiction of:

(1) All controversies between two or more States;

...

Manifestly the instant Complaint reflects the involvement of parties of the requisite character to invoke the original and exclusive jurisdiction of the Court. The question is whether the Complaint presents a "case" or a "controversy" within the meaning of Section 2, Article III of the Constitution.

I. THE COMPLAINT REFLECTS A JUSTICIABLE CASE AND CONTROVERSY OVER WHICH THE COURT HAS ORIGINAL AND EXCLUSIVE JURISDICTION.

The citation of but one decision suffices to demonstrate conclusively that not only does this Court have original and exclusive jurisdiction to hear and decide this matter, but that it is imperative that such jurisdiction be exercised by this Court: *Western Union Co. v. Pennsylvania*, 368 U.S. 71 (1961).

It is now settled that the proper, and indeed the only, forum to resolve controversies such as the present one is the Supreme Court of the United States.

In *Western Union Co. v. Pennsylvania*, *supra*, the Supreme Court had before it a fact situation identical to the one presented by the instant Complaint in every material respect, and it was there held that the Supreme Court of the United States has original and exclusive jurisdiction of disputes between two or more states over which state has the power to escheat intangible property. The state courts of Pennsylvania, it was ruled, lacked the power to decree an escheat to Pennsylvania of debts owed by Western Union Company since New York was, under the New York statutes, actively asserting the right to escheat the same property. Inasmuch as New York would not be bound by the Pennsylvania judgment, the holder of the property, Western Union, would be subjected by the Pennsylvania judgment to the risk of multiple liability for a single debt, in contravention of due process. The property consisted of undisbursed moneys held by Western Union (a corporation chartered in New York, with its principal place of business in that state, and doing business in all other states) arising out of money orders purchased in Pennsylvania to be transmitted to payees in Pennsylvania and other states.

In view of the decisive effect of the decision on the matter at bar, we take the liberty of quoting *in extenso* from the opinion of this Court in the *Western Union Co.* case.

Mr. Justice Black, speaking for the majority, said, in part (pages 143-145 in 82 Supreme Court Reports):

"The claims of New York are particularly aggressive,

not merely potential, but actual, active and persistent—best shown by the fact that New York has already escheated part of the very funds originally claimed by Pennsylvania. These claims of New York were presented to us in both the brief and oral argument of that State as *amicus curiae*. In presenting its claims New York also called our attention to the potential claims of other States for escheat based on their contacts with the separate phases of the multi-state transactions out of which these unclaimed funds arose, including: The State of residence of the payee, the State of the sender, the State where the money order was delivered, and the State where the fiscal agent on which the money order was drawn is located. Arguments more than merely plausible can doubtless be made to support claims of all these and other states to escheat all or parts of all unclaimed funds held by Western Union. And the large area of the company's business makes it entirely possible that every state may now or later claim a right to participate in these funds. But even if, as seems unlikely, no other state will assert such a claim, the active controversy between New York and Pennsylvania is enough in itself to justify Western Union's contention that to require it to pay this money to Pennsylvania before New York has had its full day in court might force Western Union to pay a single debt more than once and thus take its property without due process of law.

"Our Constitution has wisely provided a way in which controversies between States can be settled without subjecting individuals and companies affected by those controversies to a deprivation of their right to due process of law. Article III, 2 of the Constitution gives this Court original jurisdiction of cases in which a State is a party. The situation here is in all material respects like that which caused us to take jurisdiction in *Texas v. Florida*, 306 U.S. 398. There four states sought to collect death taxes out of an estate. The tax depended upon the domicile of the decedent, and this Court said that 'by the law of each state a decedent can have only a single domicile for purposes of death taxes . . . ' *Id.*, at 408. Thus, there was only one tax due

to only one state. The estate was sufficient to pay the tax of any one state, but the total of the claims of the four states greatly exceeded the net value of the estate. For this reason, as we said, the risk of loss to the state of domicile was real and substantial, unless we exercised our original jurisdiction to avoid 'the risk of loss ensuing from the demands and separate suits of rival claimants to the same debt or legal duty.' *Id.*, at 405. The rival state claimants here, as in *Texas v. Florida*, can invoke our original jurisdiction.

"The rapidly multiplying state escheat laws, originally applying only to land and other tangible things but recently moving into the elusive and wide-ranging field of intangible transactions have presented problems of great importance to the states and persons whose rights will be adversely affected by escheats. This makes it imperative that controversies between different states over their right to escheat intangibles be settled in a forum where all the states that want to do so can present their claims for consideration and final, authoritative determination. Our Court has jurisdiction to do that. Whether and under what circumstances we will exercise our jurisdiction to hear and decide these controversies ourselves in particular cases, and whether we might under some circumstances refer them to United States District Courts, we need not now determine. Cf. *Massachusetts v. Missouri*, 308 U.S. 1, 18-20. Nor need we, at this time, attempt to decide the difficult legal questions presented when many different States claim power to escheat intangibles involved in transactions taking place in part in many states. It will be time enough to consider those complicated problems when all interested States—along with all other claimants—can be afforded a full hearing and a final, authoritative determination. It is plain that Pennsylvania courts, with no power to bring other states before them, cannot give such hearings. They have not done so here; they have not attempted to do so. As a result, their judgments, which cannot, with the assurance that comes only from a full trial with all necessary parties present, protect *Western Union* from having to pay the same single obligation twice, cannot

stand. When this situation developed, the Pennsylvania courts should have dismissed the case.

"..."

The State of Texas seeks by the instant Motion and Complaint to do precisely what the Supreme Court declared appropriate, and indeed necessary, in the *Western Union* case: Give the rival states their "full day in court" before escheating intangibles claimed by more than one state.

Relying upon *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1951), the Supreme Court of Pennsylvania had in *Pennsylvania v. Western Union Co.*, 400 Pa. 337, 162 A2d 617 (1960), rejected Western Union's argument that it would be subjected to the risk of double escheat. But on appeal, the Supreme Court of the United States agreed with Western Union. Applying that principle to the present case, it is clear that Sun Oil Company will be denied due process by allowing the courts of New Jersey or Pennsylvania—or for that matter, Texas—to proceed to take custody of and/or escheat the subject debts of Sun Oil Company while other states are vigorously asserting their right to take custody and/or escheat the same debts.

In the present instance the jurisdiction of the courts of Texas, New Jersey, and Pennsylvania to escheat the property purports to be based, as did the jurisdiction of the Pennsylvania and New York courts in the *Western Union Co.* case, on the presence of the property within the state. Article 3272a, Texas Civil Statutes (Vernon's); Chapter 37, Article 3, Section 2A: 37-29, 37-44, New Jersey Statutes; Title 27, Chapter 5, Section 333, Purdon's Pennsylvania Statutes (copies of which statutes appear in the Appendices hereto as Appendices A, B, and C, respectively).

In this connection, Texas' claim is based on Article 3272a, Title 53, Revised Civil Statutes of Texas. This statute became effective as recently as November 7, 1961. It requires every person holding personal property subject to escheat under Article 3272 of Title 53, Revised

Civil Statutes of Texas, 1925 (a copy of which appears in the Appendices hereto as part of Exhibit A) to file a report thereof with the State Treasurer. The terms "person," "personal property," and "subject to escheat" are defined in the Act as follows:

"(a) The term 'person' as used in this Article means any individual, corporation, business association, partnership, governmental or political subdivision or officer, public authority, estate, trust, trustee, officer of a court, liquidator, two (2) or more persons having a joint or common interest, or any other legal, commercial, governmental or political entity, except banks, saving and loan associations, banking organizations or insurance companies.

"(b) The term 'personal property' includes, but is not limited to, money, stocks, bonds and other securities, bills of exchange, claims for money or indebtedness and other written evidences of indebtedness, dividends, deposits, accrued interest, purchase payments, sums payable on certified checks, certificates of membership in a corporation or association, amounts due and payable under the terms of any insurance policy, security deposits, unclaimed refunds and deposits for utility or other services, funds to redeem stocks and bonds, undistributed profits, dividends, or other interests, production and proceeds from oil, gas and other mineral estates, and all other personal property and increments thereto, whether tangible or intangible, and whether held within this State or without the State for a person or beneficiary whose last known residence was in this State.

"(c) The term 'subject to escheat' shall include personal property presumed to be subject to escheat by the prima facie conclusions contained in Article 3272, including all personal property (1) of which the existence and whereabouts of the owner are unknown and have been unknown to the holder for more than seven (7) years and (2) on which, from the knowledge and records of the holder it appears that no claim or act of ownership has been asserted or exercised during

the past seven (7) years and (3) on which no will of the last known owner has been recorded or probated in the county where the property is situated within the past seven (7) years."

The Courts of Texas have not been called upon to construe this statute, but the Attorney General of Texas has rendered an official opinion thereon, namely Attorney General's Opinion No. WW-1180 (1961), from which we quote as follows:

"The Legislature, in our opinion, intended by this definition of personal property to include all personal property subject to escheat which is held in this state, regardless of the last known residence of the beneficiary or person for whom the property is held, and that held outside the state for a person or beneficiary whose last known residence was in this state."

It is the contention of Texas that all of the property reported by Sun Oil Company to the Treasurer of Texas as being subject to escheat under the statutes of Texas is either "held within the State of Texas" or "without the state for a person or beneficiary whose last known residence was in this state" or both. Property in either category is considered by the Treasurer of Texas and the Attorney General of Texas as having its situs in Texas.

The statute under which New Jersey is proceeding in its suit to acquire this property is Chapter 37, Article 3, Section 2A: 37-29 through 37-44, New Jersey Statutes Annotated (a copy of which appears in the Appendices hereto as Exhibit B). That statute establishes a procedure whereby the state can take into its protective custody certain types of personal property held by corporations organized under the laws of New Jersey. At the expiration of two successive years in such protective custody the state may then escheat the property. New Jersey apparently contends it has in rem jurisdiction to take the subject property into pro-

protective custody by virtue of being the domiciliary state of the corporation.

The applicable Pennsylvania statute provides that: "Whosoever any real or personal property within or subject to the control of this Commonwealth has been or shall be and remain unclaimed for the period of seven successive years, such real or personal property . . . shall escheat to the Commonwealth. . . ." Title 27, Escheats, Chapter 5, Section 333, Purdon's Pennsylvania Statutes Annotated. That statute, along with several other sections under Title 27 which may be utilized by Pennsylvania with regard to the subject property, are set forth in the Appendices hereto as Appendix C.

Here the property is of the very same character as that involved in the *Western Union Co.* case. It consists of numerous debts of the holder corporation, Sun Oil Company, that have in varying degrees arisen out of the corporation's interstate activities, the corporation being domiciled in New Jersey but maintaining its offices in Pennsylvania and transacting business in practically every state in the Union under certificates of authority from the states. In Texas the corporation conducts extensive operations under a certificate of authority through its two regional offices.

This property is being claimed by the domiciliary state (New Jersey), the state wherein the corporation has its central offices (Pennsylvania), and the state wherein the debts arose and are situate (Texas). Are actual, active, persistent, and aggressive claims being made by these states?

The property has been reported by Sun Oil Company to the Treasurer of Texas as being personal property deemed by such holder to be subject to escheat under the Texas statutes.

The Treasurer has proceeded to issue and have posted the notices required by the Texas statute when property is so reported. Save for the instant Motion and Complaint, a suit to escheat this property would be filed in the Texas

courts against Sun Oil Company and the missing owners by the Attorney General of Texas in May of 1962. Further, Texas has notified Sun Oil Company that Texas denies the right of any other state to escheat or take custody of such property and is itself claiming the right to escheat such property. The fact that Texas is aggressively asserting a claim is, in addition, evidenced by the very Motion and Complaint at bar.

Not only has the State of New Jersey actually filed suit in its courts to take custody of the property in order to summarily escheat it, but Sun Oil Company's multiple liability defense has been overruled by the Court and the suit has advanced past a pre-trial hearing, being now set for a trial on the merits on July 15, 1962. Sun Oil Company has notified New Jersey and the New Jersey Trial Court that Texas denies the right of New Jersey to take this property and is claiming it for itself, but the State of New Jersey, nevertheless, persists in asserting its claim to the property.

Further, Sun Oil Company has been notified by the Attorney General of Pennsylvania that Pennsylvania is claiming this property.

Hence, the *Western Union Co.* case does not exhibit any greater or more active, persistent or aggressive assertion of claims by different states to the same intangibles than does the present case. Indeed, the present case presents even stronger reasons why the court has, and must exercise, original jurisdiction.

II. ALL INDISPENSABLE AND NECESSARY PARTIES ARE BEFORE THE COURT.

All of the parties whose presence is indispensable, necessary, or proper for the determination of a case or controversy between these states are properly made parties defendant. In this connection, we take note of the following statement in the *Western Union Co.* case:

"It will be time enough to consider those complicated problems when all of the interested states—along with all other claimants—can be afforded a full hearing and a final authoritative determination."

Here, all of the interested states, along with all other claimants, can be afforded such a hearing and determination. The states in actual contention for the property are made parties defendant, along with the holder of such property. If there are other states desiring to claim the property, they have notice of the proceeding and are at liberty to intervene. If every state which might wish to claim the property—as opposed to having actually asserted a claim to the property—were made a defendant at the outset, we would have to make every state in the Union a defendant without having the slightest notion of whether these other states have any interest at all in the property. To do so, we submit, would be premature, to say the least, and altogether unnecessary.

What of the last known owners and/or their unknown successors in interest? There are over 1800 different individual creditors listed in the report of this property by Sun Oil Company to the Treasurer of Texas. Some have last known addresses and some do not. The fact that these people have not been heard from by the Sun Oil Company nor reached at their last known addresses for many years indicates the futility of attempting to perfect personal service on such persons. If substituted service were attempted, where would publication be made? There is no statute of the United States prescribing service by publication in such a case as this. And, it cannot be said in the present case which state's law is to be followed in making substituted service on the missing persons.

In any event, the thousands of persons who are listed in the report by the Sun Oil Company to the Treasurer of Texas as missing creditors of the Sun Oil Company are

neither necessary nor indispensable parties to this suit. They do not have a joint interest with any of the parties hereto. This is not a suit to escheat and/or take custody of the property. That can be accomplished in a subsequent proceeding against Sun Oil Company and its missing creditors in the state courts. In such later proceeding the missing owners of property, will, it must be presumed, be afforded adequate notice and all other rights of "due process" before there is any declaration of escheat by the state courts.

The relief sought here is neither against nor in behalf of the missing owners. If the Court should grant all of the relief requested by Plaintiff, the missing owners of the subject property would still be the owners of such property.

The only question involved in the present controversy is which one of the states asserting a claim to the right to escheat this property, in fact and in law, possesses such power and right. The unknown owners have no more place in this suit than persons whose lands are affected in a boundary dispute between states. The sole issue is between the states.

Moreover, many of the missing creditors are doubtless residents of Texas. If Texas were to name them as defendants it would run afoul of the rule that the state may not invoke the original jurisdiction of the Supreme Court in a suit against one of its citizens. See *Georgia v. Pennsylvania Railroad Co.*, 324 U.S. 439, 463 (1945). If, in a suit such as this, the last known owners are indispensable or necessary parties, this question can never be resolved by the Supreme Court because the presence of the state's own citizens would defeat the jurisdiction of the Supreme Court every time.

We think the reasoning of this Court in *Arkansas v. Texas*, 346 U.S. 368, 369 (1953) is determinative of the question of whether the missing owners are indispensable parties herein. Arkansas had filed a motion for leave to file a complaint against Texas to enjoin Texas from pros-

ecuting a suit in the Texas courts against a Texas charitable corporation, the William Buchanan Foundation. The Texas suit challenged the Foundation's power to expend its funds in Arkansas and Arkansas alleged in its complaint that Texas was thus wrongfully interfering with the performance of a contract between the Foundation and Arkansas whereby the Foundation had become obligated to expend its funds in Arkansas. This Court said (pp. 369, 370):

"Texas first argues that the William Buchanan Foundation is an indispensable party to the suit. We do not agree. The theory of the complaint is that Texas is interfering without legal justification with Arkansas' contract with a third person. At least since *Lumley v. Gye*, 2 El. & Bl. 216, 118 Eng. Rep. 749 (Q.B. 1853), a cause of action based on that tortious conduct has been recognized. See *Angle v. Chicago, St. P., M & O. R. Co.*, 151 U.S. 1, 13-15; *Bitterman v. Louisville & N.R. Co.*, 207 U.S. 205, 222-223. However appropriate it might be to join the Foundation as a defendant in the case (see *Texas v. Florida*, 306 U.S. 398, 405), the controversy is between Arkansas and Texas—the issue being whether Texas is interfering unlawfully with Arkansas' contract."

Unquestionably, the rights of the charitable foundation would have been affected by any judgment the Supreme Court of the United States could have rendered in response to Arkansas' complaint. However, the controlling fact was, as it is in the present instance, that the controversy is actually between the states. The theory of Texas' Complaint herein is that New Jersey and Pennsylvania are interfering without legal justification with property which has its situs in Texas.

III. THE STATES ARE THE REAL PARTIES AT INTEREST.

Of course, in order to invoke the original jurisdiction of

the Supreme Court on the ground that a state is a party, the state must be the real party at interest and not merely representing the interests of her citizens. *Arkansas v. Texas*, 346 U.S. 368 (1953). There can be no doubt here that Texas, New Jersey and Pennsylvania are the real parties at interest. They are representing themselves not only in form but in substance because the property is not being claimed in behalf of any person or corporation: it is being claimed for the state and will become part of the public funds of the state if escheated or taken into custody.

IV. THE COMPLAINT PRESENTS A QUESTION OF LAW TO BE DETERMINED SOLELY BY THIS COURT.

In *Arkansas v. Texas*, 346 U.S. 368 (1953), this Court continued Arkansas' motion for leave to file a complaint against Texas until the Texas courts could have an opportunity to resolve the controversy. As we have said, Arkansas sought to enjoin Texas from interfering with a Texas charitable corporation's performance of a contract between the corporation and the University of Arkansas. The alleged interference was in the form of a suit by Texas in the courts of Texas challenging the charity's authority, under Texas law, to expend money for the benefit of citizens of other states. The reason assigned by this Court for continuing Arkansas' motion was that the central question presented (i.e., the authority of the Texas charity) was governed by Texas law.

Palpably the central question in the instant controversy (i.e., as between states asserting rival claims to the same property, which state has the power to escheat such property) is not a question of Texas law alone, or New Jersey law alone, but one partaking of the laws of the three states and the powers of one state over another under the Federal Constitution. The state courts cannot speak with authority

on such issues. Our present controversy, moreover, involves the threatened invasion of rights guaranteed by the due process clause of the Federal Constitution, over which the courts of no state have the final say.

A continuance of Texas' motion in the present case would be to allow the very thing the Court in the *Western Union Co. v. Pennsylvania* and *Texas v. Florida* cases was striving to avert—the risk of irreparable damage and loss to the rights and property of the competing states and the taking of property in contravention of due process.

V. THE INJUNCTIVE RELIEF PRAYED FOR BY PLAINTIFF IS NECESSARY.

This Court said in *Texas v. Florida, supra*:

"We do not doubt that when the equity powers of the Court have been invoked it has power in its discretion to give such incidental relief by way of injunction as will make its determination the effective means of avoiding risk of loss to any of the parties by reason of the asserted multiple tax liability."

It may be that the mere adjudication of the rights of the parties will in this instance provide all the relief that the requested permanent injunctive relief would afford. This, of course, is a matter to be determined within the sound discretion of the Court in light of all of the circumstances.

As to the temporary or interlocutory injunctive relief, we submit, however, that unless assurances are given by the defendant states and state officials that they will not further pursue their attempts to escheat and/or gain custody of this property and by the Defendant, Sun Oil Company, that it will not relinquish custody pending final disposition of this suit in the Supreme Court of the United States, the

temporary injunctions prayed for against such Defendants should issue forthwith.

It should be noticed here that the Plaintiff has expressly stated in its Complaint and now reaffirms, that the State of Texas, though authorized by its statutes to do so, will not institute court proceedings in Texas to escheat this property until the Supreme Court of the United States has finally disposed of the matters presented by the subject Motion and Complaint. Further, if this Court should rule against Texas on the merits there will be no need for further orders of the Court to gain compliance by Texas with the judgment of the Court.

VI. IT IS IMPERATIVE THAT THE SUPREME COURT ASSERT ITS JURISDICTION.

It has been determined by this Court that the state courts cannot settle these controversies and that the Supreme Court has the power to do so. The only question remaining is whether the Supreme Court will elect to do so. We cannot imagine the Supreme Court doing anything else other than exercising its power since it has, as a matter of record, already recognized the urgent need for abating the increasing number of conflicts between the states over their powers with regard to escheating intangible property of a multi-state character.

As was stated by way of footnote in the *Western Union Co.* decision:

"The magnitude of the problem involved is illustrated by the fact that, since 1946, at least 19 states have enacted legislation to bring or enlarge the coverage of intangible transactions under their escheat laws."

There followed a list of the 19 states. This enumeration did not include Texas, which had enacted its new abandoned property statute while the *Western Union Co.*

case was being considered. The problem to the states, and all who are affected by these statutes, has become acute.

We submit that the disputes between states evidenced in the *Western Union Co.* case and in the present case are, in part, an outgrowth of *Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1951) and *Connecticut Mutual Insurance Co. v. Moore*, 333 U.S. 541 (1948). The states, unfortunately, have been lead to believe that escheats are to be allowed on a "first come, first served" basis, and the scramble by state legislatures and other state officials to get their respective state's claims staked first resembles something akin to the California Gold Rush.

In this connection, observe *New Jersey v. American-Hawaiian Steamship Co.*, 29 N. J. Super. 116, 101 A.2d 598 (1953), where the Court said with reference to the escheat of wages earned in New Jersey and payable by a foreign corporation authorized to do business in New Jersey (at pages 608-609):

"It is apparent that New Jersey is not the only state which has contact with the subject matter. The substance of defendants' position is that New Jersey's interest is not such as to exclude the authority of another state to escheat the same property and hence there looms the prospect of double escheat. In fact, New Jersey's claim ultimately to escheat wages earned elsewhere from its domestic corporations as will thus to escheat wages earned here from foreign corporations, postulates a like power in another state to escheat wages earned there from New Jersey corporations and wages earned here from corporations of that other state.

"The United States Supreme Court has not yet formulated a test for determining the respective rights of several states where each has contact with the intangible and each is in a position to effect seizure by personal service of process upon the debtor within its jurisdiction. In *Connecticut Mutual Life Insurance Co. v. Moore*, 333 U.S. 541, 68 S. Ct. 682, 92 L. Ed. 863

(1948), it was held that New York could act with respect to proceeds of insurance policies issued by a foreign corporation for delivery in New York on lives of persons resident in New York at the time of delivery. And in the Standard Oil case (State, by Parsons v. Standard Oil Co.), (5 N. J. 281, 74 A.2d 565 (1950); affirmed 341 U.S. 428, 71 S. Ct. 822, 95 L. Ed. 1078 (1951) the possibility of a superior claim in another state was held not to invalidate the escheat by New Jersey. This seems necessarily to follow from the conclusion that although the debtor was entitled to the protection of the full faith and credit clause, yet another state was nonetheless free to assert its claim against the escheating state in the Federal Supreme Court. 341 U.S. at page 443, 71 S. Ct. 822, 95 L. Ed. 1078.

"Hence New Jersey's right to escheat does not depend upon a nice weighing of the respective contacts of this and another state. New Jersey's contact being substantial, its power to escheat the property as against defendants seems clear, albeit that in a later proceeding between contending states superiority of claim may be found in another state.

"Moreover, it cannot be assumed that a mere superiority of interest will carry an exclusive right to the property. The final solution may be an equitable prorating between or among the interested states. And further, it may be that the state which acts first will prevail. Unseemly as a race among states may be, it is not uncommon for the law to reward the vigilant and this rule may here apply even though its usual application occurs between private litigants . . ."

This might be termed "the devil take the hindmost" theory of escheat. Its effects are to be seen in the fact that the New Jersey courts hold that New Jersey has the power to escheat unclaimed dividends of a New Jersey corporation payable to stockholders whose last known addresses are in other states, *New Jersey v. American Sugar Refining Co.*, 20 N. J. 286, 119 A.2d 767 (1956), and unclaimed dividends

of a foreign corporation payable to stockholders whose last known addresses are in New Jersey. *New Jersey v. F. W. Woolworth Co.*, 45 N. J. Super. 259, 132 T.2d 550 (1957).

Indeed, such a race is "unseemly", in our view, and it can serve no purpose except to breed chaos and confusion not only in an important area of the law but in the relations of the states.

An order of priority to be observed by states pressing conflicting escheat claims against the same intangibles must be established before it will ever become safe for the debtor to relinquish to any one state the moneys owed on debts arising out of the interstate activities of the debtor. Also, the establishment of definite and authoritative standards by which the states can be governed in asserting their escheat powers with regard to persons and property connected with other states is absolutely essential to peace and good order in the relationships of the states under our federal system. The present Motion and Complaint afford this Court the opportunity, and, moreover, the obligation, to meet this need.

CONCLUSION

The Complaint which Texas asks leave to file presents a grinding collision of interests of the states and a consequent threat of irreparable damage to the property and constitutional rights of the stakeholder, as well as to those of the rival states, which only the Supreme Court of the United States can remedy. Therefore, in conformity with the high purpose of the powers conferred on this Court by Section 2, Clause 2, Article III of the Constitution and the traditional role of this Court as sole arbiter of disputes which, but for the federal system, would be the subject of diplomatic adjustment between the states, this Court should exercise its authority to hear and determine this question of paramount interest to the states.

Respectfully submitted,

WILL WILSON

Attorney General of Texas

HENRY G. BRASWELL

Assistant Attorney General

Courts Building

Austin 11, Texas

ATTORNEYS FOR PLAINTIFF

PROOF OF SERVICE

I, Will Wilson, Attorney General of Texas, one of the attorneys for Plaintiff, the State of Texas, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the — day of —, 1962, I served copies of the foregoing Brief in Support of Motion for Leave to File Complaint, on each of the parties defendant by depositing copies in a United States post office or mail box, as certified mail with air mail postage prepaid, and addressed to:

- (1) Honorable Robert B. Meyner
Governor of New Jersey
State Capitol
Trenton, New Jersey
- (2) Honorable Arthur J. Sills
Attorney General of New Jersey
State Capitol
Trenton, New Jersey
- (3) Honorable David L. Lawrence
Governor of Pennsylvania
State Capitol
Harrisburg, Pennsylvania
- (3) Honorable David Stahl
Attorney General of Pennsylvania
State Capitol
Harrisburg, Pennsylvania

- (5) Mr. Joseph T. Wilson, Jr.
Treasurer of Sun Oil Company
1608 Walnut Street
Philadelphia 3, Pennsylvania
- (6) Mr. Henry A. Frye
Pepper, Hamilton & Scheetz
Fidelity-Philadelphia Trust Building
Philadelphia 9, Pennsylvania
(It is known to Plaintiff that said person
and firm are attorneys for Sun Oil Com-
pany in relation to this matter.)
- (7) Mr. T. F. Hill
Southland Center
P. O. Box 2880
Dallas 21, Texas
(Said person is Sun Oil Company's reg-
istered agent for service in Texas.)

It is further certified that copies of said Brief have been served on the states named in Paragraph VI of said Complaint by mailing copies by United States certified air mail prepaid, to the Governors and Attorneys General of each of such states.

WILL WILSON
Attorney General of Texas

ATTORNEY FOR PLAINTIFF,
The State of Texas

APPENDICES

APPENDIX A

PERTINENT TEXAS STATUTES

Article 3272. *When estates shall escheat.*—If any person die seized of any real estate or possessed of any personal estates, without any devise thereof, and having no heirs, or where the owner of any real or personal estates shall be absent for the term of seven years, and is not known to exist, leaving no heirs, or devisee of his estates, such estate shall escheat to and vest in the State. Where no will is recorded or probated in the county where such property is situated within seven years after the death of the owner it shall be prima facie evidence that there was no will, and where no lawful claim is asserted to, or lawful acts of ownership exercised in, such property for the period of seven years, and this has been proved to the satisfaction of the court, it shall be prima facie evidence of the death of the owner without heirs. Any one paying taxes to the State on such property, either personally or through an agent, shall be held to be exercising lawful acts of ownership in such property within the meaning of this title, and shall not be concluded by any judgment, unless he be made a party by personal service of citation, to such escheat proceedings, if a resident of this State, and his address can be secured by reasonable diligence, but, if he be a non-resident of the State or can not be found, the person service of citation shall be made upon any agent of such claimant, if such agent, by the use of reasonable diligence, can be found; such diligence to include an investigation of the records of the office and inquiry of the tax collector and tax assessor of the county in which the property sought to be escheated is situated.

Article 3272a, Personal Property Subject to Escheat

Report by holder of personal property.

"Section 1. Every person holding personal property sub-

ject to escheat under Article 3272 of Title 53, Revised Civil Statutes of Texas, 1925, at the time of the effective date of this Act, shall, within sixty (60) days thereafter, file a report thereof with the State Treasurer, as specified in section 2 of this Article. Every person who holds personal property which becomes subject to escheat under Article 3272 after the effective date of this Act, shall, within sixty (60) days thereafter, file a report thereof with the State Treasurer, as specified in Section 2 of this Article; provided that after one report has been made under this Article by any person, subsequent reports by such person may be made on an annual basis on or before May 1st of each year.

"(a) The term 'person' as used in this Article means any individual, corporation, business association, partnership, governmental or political subdivision or officer, public authority, estate, trust, trustee, officer of a court, liquidator, two (2) or more persons having a joint or common interest, or any other legal, commercial, governmental or political entity, except banks, savings and loan associations, banking organizations or institutions.

"(b) The term 'personal property' includes, but is not limited to, money, stocks, bonds and other securities, bills of exchange, claims for money or indebtedness and other written evidences of indebtedness, dividends, deposits, accrued interest, purchase payments, sums payable on certified checks, certificates of membership in a corporation or association, amounts due and payable under the terms of any insurance policy, security deposits, unclaimed refunds and deposits for utility or other services, funds to redeem stocks and bonds, undistributed profit, dividends, or other interests, production and proceeds from oil, gas and other mineral estates, and all other personal property and increments thereto, whether tangible or intangible, and whether held within this State, or without the State for

a person or beneficiary whose last known residence was in this State.

"(c) The term 'subject to escheat' shall include personal property presumed to be subject to escheat by the prima facie conclusions contained in Article 3272, including all personal property (1) of which the existence and whereabouts of the owner are unknown and have been unknown to the holder for more than seven (7) years and (2) on which, from the knowledge and records of the holder it appears that no claim or act of ownership has been asserted or exercised during the past seven (7) years and (3) on which no will of the last known owner has been recorded or probated in the county where the property is situated within the past seven (7) years.

"Section 2. Form of Report. The report shall be prepared and returned in triplicate, verified under oath, and shall include the following:

"(a) The name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of the property reported; or the name and address, if known, of any person who may be entitled to such property; together with a brief description of the property, which in the case of deposits, shall disclose the total balance. If any deductions have been made therefrom by the holder for service, maintenance, or other charges, they shall be disclosed unless such deductions have been fully restored in the total amount reported as provided in subsection (d) below.

"(b) In case of unclaimed funds of life insurance corporations, the full name of the insured beneficiary or annuitant and his last known address according to the life insurance corporation's records.

"(c) In the case of mineral proceeds, a list of all credits grouped as to the counties from which the credited proceeds were derived, including credits which have theretofore been charged off or disposed of in any manner except

by payment to the owner thereof; giving the name and last known address of the owner; the fractional mineral interest of the owner; description and location of the land or lease from which the oil, gas, or mineral was produced; the name of the person, firm or corporation who operated the oil or gas well or mine; the period of time during which such proceeds accumulated and the price for which such oil, gas, or other mineral was sold, each such several ownerships to be given an identifying number. The nature and identifying number, if any, or description of the property, and the amount appearing from the records to be due, except that items of value under Ten Dollars (\$10) each may be reported in aggregate;

"(d) The date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property. Since the State upon escheat is entitled to all rights of the former owner, in the case of dormant deposits or accounts on which deductions for service, maintenance, or other charges would be restored under the policy or procedures of the holder upon request by the owner, such deposits or accounts shall be reported and shall be subject to escheat hereunder in the same amount to which the former owner would be entitled upon such request; and

(e) Other information which may be prescribed by rule of the State Treasurer as necessary for the administration of this Article.

"(f) The verification under oath at the conclusion of the report shall include the following language:

"The foregoing report contains a full and complete list of all personal property held by the undersigned for which, from the knowledge and records of the undersigned, it appears that the existence and whereabouts of the owner are unknown and have been unknown for more than seven (7) years and on which no claim or act of ownership has been asserted or exercised during the past seven (7) years and

on which no will of the last known owner has been recorded or probated in the county where the property is situated within the past seven (7) years.'

"(a) Verification, if made by a partnership, shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

"Section 3. Notice and Publication of Lists of Abandoned Property.

'a) The name, if known, and last known address, if any, reports specified in Section 2 are received, the State Treasurer shall mail a notice thereof, as hereinafter described, to the Sheriff of the county of the domicile or principal place of business of the holder so reporting, and in cases involving more than Fifty Dollars (\$50), to the Sheriff of the county of the last known residence of the owner if it is different from the county of the holder. The notice to the Sheriff shall be entitled 'Notice of Names of Persons Appearing to be Owners of Abandoned Property,' and shall contain:

"(1) The names in alphabetical order and the last known addresses, if any, of persons listed in the report and entitled to notice as hereinbefore specified; and

"(2) A statement that information concerning the amount and description of the property and the name and address of the holder may be obtained by any persons possessing or claiming an interest in the property by addressing an inquiry to the holder so reporting. Within ten (10) days after receipt of said notice, it shall be the duty of the Sheriff to post it on the courthouse door or the courthouse bulletin board, where it shall remain posted for a period of not less than thirty (30) days. Thereafter the Sheriff shall return the notice to the State Treasurer with his certificate showing the date and time of posting required by this Section.

"Section 4. Determination of Escheat.

"(a) All personal property reported under the provisions of this Article remaining unclaimed at the expiration of one hundred and twenty (120) days from the date upon which the report by the holder of such property was received by the State Treasurer, shall be deemed to be abandoned, and shall escheat to, and the title thereto vest in, the State of Texas, and the State Treasurer shall so certify to the Attorney General.

"(b) The Attorney General shall immediately institute an action in a District Court of the county in which the holder resides or is domiciled to judicially determine that such property has escheated to the State. The suit shall be brought as a class action, and may include the property reported by more than one holder from the same or other counties, and the sworn petition shall state that the action is brought by the State of Texas upon the relation of the State Treasurer by the Attorney General for the purpose of escheating and vesting the title in the State of Texas of the property therein described, stating the description of the property which has escheated to the State, the name of the person or holder possessed thereof and the names of the person or persons claiming, or last known to have claimed, such property, if any such names are known, all of which information shall be separately listed in parallel columns, and the facts and circumstances in consequence of which such property is claimed to have escheated, praying that such property be escheated, and the title thereto vested in the State of Texas. The petition shall not be subject to objections as to the misjoinder of parties or misjoinder of causes of action.

"(c) The Clerk of the Court in which such suit is filed shall issue citation as in other civil cases, which shall be styled, 'The State of Texas,' and shall be directed to the person or holder named in the petition as being possessed of the property described in said petition, which citation need not be accompanied by a copy of the original petition

filed in the suit, but which shall state concisely the nature of the suit, a description of the property possessed by the person or holder to whom the citation is directed, and the name of the person or persons claiming, or last known to have claimed, such property as set forth in the petition, together with the facts and circumstances in consequence of which such property is claimed to have been escheated, and the prayer contained in the petition.

"(d) The Clerk of the Court in which such suit is filed shall also issue citation which shall be styled, 'The State of Texas,' and shall be directed to all persons interested in, claiming, or asserting an interest in the abandoned property, which description of such property, together with the name of the last holder thereof and the names of the person or persons claiming, or last known to have claimed, such property, shall be listed as described in the petition, to appear and answer as provided in the Texas Rules of Civil Procedure, which citation shall be published in accordance with Rules 114, 116, 117, and 118, Texas Rules of Civil Procedure, except that such citation shall be published only once at least twenty-eight (28) days before the return day of the citation, and except as such rules are further herein modified. The costs of publication shall be paid by the State Treasurer at the rate set out in Article 29, Revised Civil Statutes. Any person claiming an interest in such abandoned property, whether such person is or is not specifically named in the petition, may appear and answer in such proceedings as in other civil suits.

"(e) All actions brought under this Section shall be governed by the procedure provided in the Texas Rules of Civil Procedure relating to class actions, unless otherwise provided in this Article.

"(f) The sworn reports filed with the State Treasurer in accordance with Section 2 of this Article shall, when offered in evidence, constitute prima facie evidence that the property set forth therein has no owner and has escheated

to the State, both under the provisions of this Article and Article 3272 of this Title, unless the person or claimant to the property set forth and described in such report shall file a written denial, under oath, denying that such property has no owner and has escheated to the State, and asserting a claim and proof of ownership thereto. In the absence of such a sworn plea, the sworn report shall be received in evidence as conclusive proof that the property set forth and described in such report has no owner and has escheated to the State, both under the provisions of this Article and Article 3272 of this Title.

"(g) If it appears to the Court that the property described in the petition has been actually abandoned, and that there is no person entitled to it, judgment shall be rendered declaring such property escheated and vesting the title thereto in the State of Texas. The judgment shall also direct the holder of the property so described, which has been actually abandoned and escheated and the title thereto vested in the State, to deliver such property immediately to the State Treasurer. If no person or claimant to any property described in the petition shall appear and answer within the time provided for entering such appearance and answer by the Texas Rules of Civil Procedure, the Court shall render judgment by default as to such property in favor of the State of Texas. If the Court should find that such property has not been actually abandoned and therefore should not be escheated and the title thereto vested in the State of Texas, and that the title to such property should vest in the person or persons claiming the title to or an interest in such property, the Court shall direct such property to be delivered to the person or persons lawfully entitled to possession thereof. Any person who has entered an appearance in the trial of such cause, and the Attorney General on behalf of the State, shall have the right to prosecute an appeal from the judgment of the trial court

as provided by the Texas Rules of Civil Procedure. No appeal bond shall be required on an appeal by the State of Texas.

"(h) After the judgment of the Court vesting the title to such property in the State of Texas has become final, the Attorney General shall so certify to the State Treasurer. When such certification has been received by the State Treasurer and the property which has been escheated and the title thereto vested in the State of Texas under such judgment has been delivered to the State Treasurer in accordance with the mandate contained in such judgment, the State Treasurer shall immediately place the sums of money so escheated to the State of Texas in the State Treasury to the credit of the General Fund, subject to the provisions of Section 14 of this Article. Where the title to intangible personal property other than money has been adjudged to be vested in the State of Texas, and such property has been sold as provided in Section 5 hereof, the State Treasurer shall deposit the proceeds received from the sale of such intangible personal property in the State Treasury to the credit of the General Fund. After delivery of the property to the State Treasurer, the holder thereof shall be relieved of all liability therefor to any person who may later assert a claim thereto.

"Section 5. Sale of Abandoned Property.

"Section 6. Claim of Interest in Abandoned Money and Intangible Personal Property Escheated to the State.

"Section 7. Determination of Claims.

"Section 8. Judicial Action Upon Determination of Claims.

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"Section 10. Reciprocity for Property Presumed Abandoned or Escheated Under the Laws of Another State. If specific property which is subject to the provisions of this Article and is held for or owed or distributable to an owner whose last known address is in another State by a holder who is subject to the jurisdiction of that State, the specific property is not presumed abandoned in this State and subject to this Article if:

"(a) It has been claimed as abandoned or escheated under the laws of such other State; and

"(b) The laws of such other State make reciprocal provisions that similar specific property is not presumed abandoned or escheatable by such other State when held for or owed or distributable to an owner whose last known address is within this State by a holder who is subject to the jurisdiction of this State.

"Section 10a. Foreign Owners. This Article shall not apply to any bank account held within this State where the last known owner was a citizen and resident of another country.

"Section 11. Unclaimed Property Held by the Federal Government.

...
"Section 15. Escheat Expense and Reimbursement Fund.
...

APPENDIX B
EXCERPTS FROM
PERTINENT NEW JERSEY STATUTES

ARTICLE 3. PERSONAL PROPERTY;
ALTERNATE METHOD.

2A:37-29. Summary of Alternate method

In addition to the method provided for the escheat generally of personal property as defined in article 2 of this chapter, an alternate method may be employed in certain cases defined in this article 3. By this latter method the state may take into its protective custody property consisting of cash, dividends, interest or wages owed by any corporation organized or doing business under the laws of this state, belonging to any person remaining unknown, or whose whereabouts is unknown, or whose property remains unclaimed as defined herein for a period of 5 successive years; and after a period of protective custody has expired as herein prescribed, the state may proceed to escheat such property to itself.

2A:37-30. When alternate method is available; summary action

Whenever a corporation organized under the laws of this state shall have custody or possession of, or shall have deposited with or given to an agent or trustee residing within or without the state custody or possession of, any moneys which are or shall be payable to any person as a dividend upon the capital stock, preferred or common, of the corporation, or as interest payable upon the corporation's bonds, indentures, notes or other formal instruments evidencing the indebtedness of the corporation, or any moneys payable as wages from the corporation to any person, and whenever any person or any corporation organized

under the laws of any other state and authorized to do business in this state shall have custody or possession of any moneys payable by such person or corporation to any person as wages earned within this state, or of any moneys otherwise having a situs within this state, which moneys are payable to any one person in any of the categories above enumerated and the owner of, beneficial owner of, or person entitled to the same has been and remains unknown for the period of 5 successive years, or the whereabouts of such person has been and remains unknown for the period of 5 successive years, or such personal property has been and remains unclaimed for the period of 5 successive years, then the superior court may in a summary action brought in the name of the state of New Jersey by the attorney general or such attorney-at-law as he may designate, direct the corporation or other person aforesaid to deliver such moneys to the state treasurer for safekeeping.

2A:37-31. Moneys delivered upon service of judgment

Upon the entry of the judgment in the action, a copy of the judgment shall be served upon the corporation, or other person aforesaid, who shall forthwith deliver the said moneys to the state treasurer, together with a list of the individual amounts, the names, if known to the corporation or other person aforesaid, of the owners or beneficial owners of, or persons entitled to, such moneys, the last-known address of such persons, and any other information he may have relating to the last-known address of any person having an interest in, together with any other information relating to, such personal property or the whereabouts of such owner.

2A:37-32. Mailing of notices

The state treasurer shall thereupon mail a letter or post card to each person named in the list, to his last-known address, as shown by such list, informing him that the state

treasurer holds such moneys in the amount designated in the list as his property, for the benefit of the person therein named, and that if said person does not, in writing, make claim to such moneys within 2 years from the date of such notice, an action will be instituted to escheat such moneys to the state in conformity with this article. The state treasurer shall also mail a similar notice to the attorney general of the state where such persons had his last known address, if such address is without the state of New Jersey, advising him to present any claim that such state might have to such money. If a claim is made to the state treasurer within such period of 2 years, and he shall determine that the claim is valid, he shall pay the moneys so claimed to the person entitled thereto. If the state treasurer shall determine that the claim is not valid, he shall reject the claim. The claimant may thereupon apply to the superior court, chancery division, for a review of his determination, and the claim shall thereupon be heard and determined, de novo.

2A:37-33. Payment to operate as a release

The payment of the said moneys by the corporation or other person to the state treasurer pursuant to the provisions of this article shall, as respects such moneys, automatically operate as a full, absolute and unconditional release and discharge of the corporation or other person from any and all claims, demands or liability to the person whose moneys have been paid to the treasurer, and such payment may be pleaded as an absolute bar to any action brought against such corporation or other person by any person whatsoever. Any right to such moneys which any claimant may have shall thereby be transferred against, and shall become the obligation of, the state.

2A:37-34. Money to escheat to state

If moneys so deposited with the treasurer shall remain unclaimed for the period of 2 years from the date of the

mailing of the letter or post card to the person listed as the owner (after the 5-year period such moneys were in the custody or possession of the corporation or of its agent or trustee), the said moneys shall escheat to the state and the treasurer shall inform the attorney general thereof.

2A:37-35. Escheator's fee

2A:37-36. Action in superior court; hearing

The attorney general, or the attorney-at-law, designated by him, shall thereupon bring, in the name of the state of New Jersey, a summary action in the superior court for the escheat of the said moneys to the state of New Jersey. The hearing in the action shall be not less than 20 days nor more than 40 days after the commencement of the action.

2A:37-37. Notice

The court shall provide for notice of the action by directing that a notice as stated in section 2A:37-38 of this title be posted in the place in the state capitol specified by the court where other notices required to be posted are customarily posted, such posting to be made not less than 20 days before the date fixed for the hearing. If the amount of money or property to be escheated in the case of any one person exceeds \$5, then as to him the escheat notice shall be published once a week for 2 successive weeks in a newspaper of general circulation in Mercer county or such other county as the court shall designate, the last publication to be made not less than 20 days before the date fixed for hearing; but if such amount is less than \$5, the court may by order dispense with publication.

A copy of such notice shall also be mailed to the last known address of the person whose property is to be escheated and if such address is without this state, then to

the attorney general of the state where such person had his last known address.

2A:37-38. The contents of the notice

2A:37-39. To escheat to state

If no person shall file a claim or appear at the hearing to substantiate a claim, or where the court shall determine that a claimant is not entitled to the moneys claimed by him, then, in either event, the court shall enter a judgment that the personal property described in the complaint has escheated to the state.

2A:37-40. Court may reopen proceedings

At any time within 7 years after the entry of a judgment in escheat, the court may, upon a proper showing and sufficient proof that the claimant did not have actual knowledge of the action for escheat, reopen the same and amend the judgment in whole or in part, and in such amended judgment direct the state treasurer to repay to the claimant the moneys to which he is entitled, together with interest at 2% from the date of the original judgment.

2A:37-41. Moneys placed in separate fund; use

After the state treasurer shall have received into his custody any property or moneys as provided in this article, he shall place the same in a separate fund pending its final disposition by the court. It shall be lawful for him to invest any part of such fund temporarily in the obligations of the state or any subdivision thereof. It shall also be lawful for him to advance up to 90% of the fund as a temporary loan for the use of any department of the state, to be repaid when the custodial fund shall have been finally disposed of by the court through escheat or otherwise, provided such temporary loan shall have been approved by

the governor and the legislature. When such funds in his hands shall have become escheatable it shall be duty to notify the attorney general so that the attorney general may proceed to escheat the said moneys or property in conformity with the provisions of this article.

2A:37-42. Attorney general notified of escheatable property

2A:37-43. Treasurer authorized to repay

Whenever it shall appear to the satisfaction of the state treasurer or his representative that a person is the lawful owner of any moneys that have heretofore been received by the treasurer under the provisions of this article, and that such moneys are less than \$50 the state treasurer is hereby authorized and empowered to repay to the lawful owner aforesaid the moneys so received without the necessity of re-opening the judgment theretofore entered.

APPENDIX C

EXCERPTS FROM

PERTINENT PENNSYLVANIA STATUTES

CHAPTER 5.—UNCLAIMED FUNDS IN HANDS OF FIDUCIARIES

GENERAL PROVISIONS

§ 331. *Definitions*

(a) The term "fiduciary" in this act shall include receivers, executors, administrators, guardians, committees, trustees, assignees, and all other persons, associations, or corporations, acting in any fiduciary capacity whatever, subject to the jurisdiction of any court of any county in this Commonwealth; (b) the word "he" shall mean he, she, it, or they; (c) the word "his" shall mean his, hers, its, or theirs; and (d) the word "him" shall mean him, her, it, or them, according to whether the fiduciary is a male or female, a corporation or association, or two or more individuals.

§ 332. *Property held by trustees, etc.*

Whenever any trustee, bailee or other depository is or shall be seized or possessed of property, real, personal or mixed, as a fiduciary agent, which property is or shall be without a rightful owner, the same shall escheat to the commonwealth, subject to all legal demands on the same.

§ 333. *Property of unknown owners; unclaimed property; property without rightful owner*

(a) That whensoever any trustee or other person is or shall be sized of any property or estate, real or personal, in

a fiduciary capacity, and shall file an account of the same in any court of this Commonwealth, and whensoever it shall appear that the cestui que trust, or beneficial owner, of said property of effects, or any part thereof, has been unknown for a period of seven years, and still remains unknown, then and in such case so much of said property or effects as belonged to said unknown cestui que trust, or beneficial owner, shall escheat to the Commonwealth, subject to all legal demands on the same; and whensoever the trustee or trustees under a dry trust, and whensoever on the termination of an active trust, or afterwards, the trustee or trustees thereunder is, are, or shall be seized or possessed of any property or estate, real or personal, either the subject of the trust or in any wise arising from the possession of the trust property, or the exercise of the trust, or resulting after the termination of the trust and before distribution is actually made under the terms of the trust or decree of court, from rents, accretions, profits, or interest from, of, or on the trust property, or any part thereof, which property or estate is or shall be without a lawful owner, such property or estate shall escheat to the Commonwealth, subject to all legal demands on the same.

(b) Whensoever the owner, beneficial owner of, or person entitled to any real or personal property within or subject to the control of the Commonwealth or the whereabouts of such owner, beneficial owner or person entitled has been or shall be and remain unknown for the period of seven successive years, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same.

(c) Whensoever any real or personal property within or subject to the control of this Commonwealth has been or shall be and remain unclaimed for the period of seven successive years, such real or personal property, together with

the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same.

(d) Whensoever any real or personal property within or subject to the control of this Commonwealth is or shall be without a rightful or lawful owner, such real or personal property, together with the rents, profits, accretions and interest thereof or thereon, shall escheat to the Commonwealth, subject to all legal demands on the same.

(e) This section shall not apply to corporations which are engaged in receiving deposits of money, securities or other property for safe keeping.

§ 361. *Making false report; penalty*

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§ 362. *Proceedings to compel accounting*

Whenever the Auditor General shall have reason to believe that any fiduciary has in his possession any moneys of which he has filed no account within the time prescribed by law, or, if no such time be so prescribed, then when he has filed no such account within a reasonable time after moneys shall have come into his possession, which moneys would be subject to be paid into the State Treasury under the provisions of this act if an account thereof were filed, the Attorney General shall, at the suggestion of the Auditor General, apply by petition to the court, to the jurisdiction of which the said fiduciary is subject, for the issue of a citation to said fiduciary to show cause why he should not file an account of such moneys and the statement thereof required by the provisions of this act to be filed therewith, and, if no sufficient cause to the contrary be shown on the return of such citation, the said court shall order the filing of said account and statement, and enforce such order by attachment.

CHAPTER 6.—PAYMENT INTO STATE TREASURY, WITHOUT ESCHEAT

§ 431. *Proceedings to compel payment within time for escheat*

Whenever any person, firm, association, bank, national bank, trust company, or other corporation whatsoever, shall hold or be possessed of any items of money or property which are or shall be made escheatable by any act of the General Assembly, the Auditor General may and shall, after such items have been reported to or otherwise ascertained by him, and after notice and advertisement of such items shall have been given and made as required by the provisions of the act under which such items are escheatable, if the number and nature of the items of such escheatable property so held or possessed are in his opinion such as to make such action desirable, suggest to the Attorney General that, instead of proceeding for the escheat of such items in the manner prescribed by the act under the provisions of which such items are made escheatable, the Attorney General apply by petition to the proper court for an order upon the person, firm, association, bank, national bank, trust company, or other corporation, holding or possessed of such items of moneys or property, directing the payment of the same into the State Treasury to the credit of the Commonwealth, together with interest thereon actually accrued to the date of the issue of said order, or, if the property consists of chattels or securities, that the same be sold in such manner as the court shall direct, and the proceeds thereof be similarly paid into the State Treasury; all amounts and proceeds so paid to be subject to being refunded as hereinafter provided. It shall not be necessary, in instituting proceedings under the provisions of this act, to await the expiration of any period which the act making such items escheatable requires to elapse between the reporting or

ascertainment of such items and the institution of proceedings for the escheat thereof.

§ 432. *Jurisdiction of courts*

§ 433. *Petition; hearing; order; effect of payment*

Whereupon the Attorney General shall file a petition in the proper court, praying for the making of such an order, and apply to said court to set a day for a hearing upon such petition, and for a preliminary order that service of a copy of the petition and of notice of the date set for hearing be made upon the person, corpartnership, association, bank, trust company, or other corporation holding or possessed of said items. If at said hearing it shall appear to the said court that, since the reporting of or the ascertainment of said items by the Auditor General, any such items have been claimed by persons lawfully entitled thereto, or any such items are so claimed at said hearing, or that said items were not properly subject to escheat under the provisions of any act of the General Assembly, the court shall order said items or the amounts thereof to be delivered or paid to said claimants, or to remain in the possession of the person, firm, association, bank, national bank, trust company, or other corporation, as the facts shall warrant, and shall order the amounts of all items not so claimed to be paid into the State Treasury to the credit of the Commonwealth, or, if such items consist of chattels or securities, that the same be sold in such manner as the court may direct and that proceeds thereof be similarly paid into the State Treasury.

It is the purpose and intent of this act that moneys subject to escheat, sought by the Commonwealth to be ordered paid into the State Treasury without escheat, under the provisions of this act, shall be forthwith ordered by the proper court to be so paid, whenever application for such an order is made by the Attorney General after the respec-

tive periods provided by existing law making such moneys escheatable shall have expired respectively, and after the notices by mail and by advertisement required to be given by the act making such moneys escheatable shall have been given, without any further notice whatever to depositors, beneficiaries, or creditors.

An appeal to the Supreme Court may be taken from any order made by any court under the provisions of this act, by either the Commonwealth or the respondent to the petition whereon said order is made, at any time within thirty days after the date of said order.

§ 435. *Definitions*

The following words, terms and phrases, when used in this act, shall have the meaning ascribed to them in this section, except where the context clearly indicates a different meaning:

"Company". The word company shall include limited partnerships and unincorporated associations, joint-stock associations, public utility corporations, insurance exchanges, associations or corporations, and any company or corporation incorporated and doing business under the laws of this Commonwealth, except life insurance companies doing business in this Commonwealth, but including stock life insurance companies with respect to unclaimed dividends or profits declared to stockholders and with respect to unclaimed stock, except mutual savings fund societies and building and loan associations, and except banks, national banks, bank and trust companies, trust companies and other corporations, associations, partnerships, limited partnerships, and partnership associations, engaged in the business of receiving money on deposit or securities or other property for safekeeping.

"Creditor." The word creditor shall include any person who has made deposits or advances of money, or to whom dividends or profits have been declared, or to whom debts

and interest on debts have been owed, or to whom the proceeds of any policy of insurance are due and payable.

"Debt". The word debt shall include only such debts as are formally created and of the type, ownership to which is evidenced by written or printed securities having definite maturities, interest rates, places and times of payment, such as mortgages, bonds, notes, equipment-trust certificates and debentures.

"Department". The Department of Revenue of this Commonwealth.

"Person". Any natural person, association or corporation.

"Property". The word property shall include property and profits, accretions, and any interests or rights accrued or declared thereon.

The singular shall include the plural, and the masculine shall include the feminine and neuter. Section headings shall not be deemed or construed to limit the text of the sections of this act.

§ 436. *Reports*

(a) In the month of January of each year reports shall be made to the departments as follows:

(1) Every company shall make a report of all dividends or profits declared by it to any stockholder or member and unclaimed for six or more successive years next preceding the first day of said month, where funds have been provided by the company for the payment of said dividends or profits, and of all debts and interest on debts due by it to any creditor, for the payment of which debts or interest thereon funds have been provided by the company, where said payments have been unclaimed for six or more successive years next preceding the first day of said month.

(2) Every company shall make a report of any and all customers, advances, tolls or deposits held by it, and under the terms of the deposit agreement due and owing to the person or company depositing the same and unclaimed by

said person or company for six (6) or more successive years next preceding the first day of said month.

(3) Every company shall make a report of the proceeds of any policy of casualty, indemnity or fire insurance awaiting due proof for payment, or the surrender values of policies which have been surrendered by the policyholder or insured, or have been surrendered or are surrenderable at the option of the insurer under the contractual agreement between the insurer and the insured, or the portions of premiums held to the credit of any policyholder and any profits, dividends or accretions thereon which have been held and are owing by any company, as hereinabove defined, and have been unclaimed by and unpaid to the lawful owner thereof, or to the person or persons legally entitled thereto, for seven or more successive years next preceding the first day of said month.

(4) (a) Every company shall make a report of any and all stock or certificates of beneficial interest, of whatsoever nature, issued by or authorized to be issued by such company, which have been demandable and have been and remain unclaimed by the person legally entitled thereto for six or more successive years next preceding the first day of said month.

§ 437. *Inquisitorial powers of the department*

§ 441. *Procedure for the escheat of moneys or property subject to escheat*

The escheat of any moneys or property heretofore subject to escheat and required to be reported to the department under the provisions of this act, may, at the suggestion of the department, be determined and enforced by an action in the nature of a bill in equity, filed by and in the name of the Attorney General against the company and

all of its stockholders, creditors, depositors, policyholders or other persons for whom the company holds moneys or property required to be reported under the provisions of this act, in the said court of common pleas. Any such escheat proceedings may be so prosecuted whether such moneys or property shall have been reported to the department as required by the provisions of this act or have not been so reported. Any number of items of such moneys or property may be joined in one action against one company though due and owing to, or held and possessed for, different persons.

If service of the bill cannot be had on any persons legally entitled to the moneys or property required to be reported to the department, service shall be made by publication for two successive weeks in a newspaper of general circulation, published in the county in which such person resides, or, in the case of a corporation, in which it has its principal office, and also, when practicable, for the same period in such a newspaper published in the county, within or without the Commonwealth, where, when last heard from by the company, the person or corporation legally entitled to such property had its residence or place of business. Publication may be made in such form as the court shall direct, and need not contain any order or other paper in full. If the person legally entitled to such property or his legal representatives shall appear within the time limited by the court and establish his right to recover said moneys or property from the company, but for the provisions of this act, and if this right shall not be barred by the statute of limitations or presumption of payment, a decree shall be made for the payment of said moneys or other property to said person, after paying his proportionate part of the costs of the cause and of said advertising: Provided, That such person legally entitled to such moneys or property may have any issue of fact determined by a jury, and if he shall

not so appear and establish such right, a decree shall be made that said moneys or property has escheated and shall be paid by the company into the State Treasury, through the department, for the use of the Commonwealth. The amount of such decree shall bear interest at the rate of twelve per centum per annum sixty days after the same is made, and such decree shall be effectual to bar persons or companies legally entitled to said moneys or property from claiming the same from the company. An appeal may be taken by either or any party to such action to the Supreme Court at any time within thirty days after the date of the decree issued therein. A receipt of the department for any moneys or property paid over to the State Treasury, in accordance with the provisions of such decree, shall be a full and sufficient discharge to the said company from any further liability with respect to such moneys or property to any person or company legally entitled thereto.

§ 442. *Alternative procedure for payment into State Treasury without escheat*

Whenever any company shall hold or be possessed of any items of money or property required to be reported under the provisions of this act, the department may, after such items have been reported to or otherwise ascertained by it, and after notice and advertisement of such items shall have been given and made as required by this act, if the number and nature of the items so held or possessed are, in the opinion of the department, such as to make such action desirable, suggest to the Attorney General that, instead of proceeding to secure a decree for the escheat of items in the manner hereinabove prescribed, the Attorney General apply by petition to said court for an order upon said company holding or possessed of such items of money or property directing the payment of the same without escheat into the State Treasury, through the department, to the credit of the Commonwealth, together with interest

thereon actually accrued, if any, to the date of the issue of said order, or if the property consists of shares of stock or other securities that the same be sold in such manner as the court shall direct and the proceeds thereof be similarly paid into the State Treasury, all amounts and proceeds so paid to be subject to being refunded by petition to the Board of Finance and Revenue as hereinafter provided.

A receipt of the department for any moneys or property paid over to the State Treasury, in accordance with the provisions of such order of court, shall be a full and sufficient discharge to the said company from any further liability with respect to such moneys or property to any person or company legally entitled thereto.

CHAPTER 4.—ESCHEAT OF UNCLAIMED DEPOSITS GENERAL PROVISIONS

§ 241. *Definitions; application of act*

The word "debtor," in this act, shall include persons, copartnerships, associations, banks, national banks, trust companies and other corporations who or which have received deposits of money, declared dividends or profits, or owed debts or interest on debts; and trustees, guardians, committees, executors, administrators, assignees, receivers or other persons, or corporations who have received and hold moneys in any fiduciary capacity whatsoever, or continue to hold the same or any portion or increment thereof after the termination of the fiduciary relation; and shall also include officers of courts holding funds escheatable under the provisions of this act.

The word "creditor," in this act, shall include persons, as hereinafter defined, who have made deposits of money, persons to whom dividends or profits have been declared, persons to whom debts and interest on debts are or have been owed, or to whom property in storage or safekeeping

belongs, and cestuis que trustent and beneficial owners of any property, money, or estate, or of the profits, accretions, and interest thereon as hereinafter in this section defined held by any debtor as above described.

The word "person," in this act, shall include every person, persons, co-partnership, and unincorporated association, and every company, corporation, bank, national bank, safe-deposit company, trust company, insurance company, other than a life insurance company doing business in this Commonwealth, joint-stock company or association, limited partnership, and partnership association, doing business within this Commonwealth.

The words "property," "moneys," "estate," or "estates," in this act, shall include the profits, accretions and interest thereon as well as interest thereon accrued or which should have accrued between the fixing of the amount of such property, money, or estate by the award of any court and the actual distribution thereof, or at any other time; and the owner of such property, money, or estate shall be deemed entitled to demand such award, and notwithstanding any settlement with or release by him.

The provisions of this act shall not apply to the unclaimed funds and proceeds due and payable under life and endowment insurance policies and held and owing by life insurance companies doing business in this Commonwealth.

§ 262. *Contents, form, and verification of report*

NOTICE AND PROCEEDINGS TO
ENFORCE ESCHEAT

§ 281. *Notice to owners of deposits, etc.; publication of deposits*

When any particular deposit of money, or of property received for storage or safe-keeping or held for the benefit

of another, dividend, profit, debt, or interest on debt, shall be first reported to the Auditor General, he shall notify the person entitled thereto of such fact by a letter addressed to him at the address furnished by the person, corporation, or association reporting such money or property in his or its said report, if any such address is furnished in said report, and shall publish, once a week for two successive weeks, during the month of July in each year, in one or more general newspapers having the largest circulation published in the city or county in which such corporations, associations, banks, national banks, trust companies, insurance companies, limited partnerships and partnership associations may be located, respectively, a true and accurate statement containing the name, address, amount of money, or character of the property, respectively, belonging to them or for whose benefit the same is held, so far as such data has been supplied to the Auditor General by the person, corporation, or association in its report.

The Auditor General, if he deems it to the best interests of the Commonwealth, may make such publication of legal notices, in addition to publication in a general newspaper.

This section does not require the publication by the Auditor General of any item containing the name, address, amount of money, or character of property belonging to any person, where the amount involved is less than ten dollars, but publication of any such items may be made when the Auditor General deems such publication for the best interests of the Commonwealth.

The publications required by this section shall not be considered a condition precedent to the institution of prosecution of any action in the courts of the Commonwealth for the escheat of any moneys or of the proceeds of any property as provided by this act.

Items of moneys or property escheatable under the provisions of this act, which were not reported to the Auditor

General in the annual report of the person, copartnership, association, bank, national bank, or other corporation holding such moneys or property, but which were afterwards returned to the Auditor General in special reports to that officer, or which were not reported to him but were ascertained by his agents, may be advertised in the foregoing manner, for the same period, at any time, and notice by mail to the several depositors, beneficiaries, or creditors shall be given in such cases as soon as the items are reported or otherwise ascertained.

§ 282. *Escheat of deposits, etc.; enforcement; rights of creditors; decree; bill for discovery*